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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,249	12/17/2001	Susan T. Tingey	83783CEB	6214

7590

03/05/2004

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EXAMINER
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FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

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DATE MAILED: 03/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/023,249

Applicant(s)

TINGEY ET AL.

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2003.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-11 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

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1) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2) Claims 1, 2 and 11 are finally rejected under 35 U.S.C. § 102(b) as being anticipated by Saveliev et al (5,819,936). Applicant has amended the claims to call for a unit of product being wrapped and sealed in a flexible barrier material to prevent high humidity and moisture penetration. However, this amendment fails to overcome the rejection based upon Saveliev et al since the product is claimed in the claims as intended use and not as structure in the container in the claims. Applicant is directed to MPEP 2114 which discusses how intended use/functional limitations are examined with respect to the prior art. Intended use claimed may be met by a reference device which is capable of performing the intended use.

In the reference of Saveliev et al, a container is disclosed for photographic film, including a product container at body 12, a recloseable lid at 14, and a finger release at 18. The container is made of high density polyethylene (beginning col. 3, line 29).

Although the contained film disclosed by the reference of Saveliev et al is not disclosed as being wrapped and sealed in a flexible moisture-proof barrier of heat sealed aluminized thermoplastic, the container (with lid) is inherently capable of containing a product wrapped and sealed in a moisture-

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proof barrier of heat sealed aluminized thermoplastic, which has a size smaller than the volume of the interior of the container. Inasmuch as Applicant fails to claim a moisture-proof wrapped product as structure in the claims, but only claims such a wrapped product in a manner as intended use, the limitations regarding the claimed container as being for containing and exposing such a wrapped product are met by the capability of the container of Saveliev.

3) Claims 1, 3, 4, 9 and 11 are finally rejected under 35 U.S.C. § 102(b) as being anticipated by Rapchak et al (5,667,094). Applicant has amended the claims to call for a unit of product being wrapped and sealed in a flexible barrier material to prevent high humidity and moisture penetration. However, this amendment fails to overcome the rejection based upon Saveliev et al since the product is claimed in the claims as intended use and not as structure in the container in the claims. Intended use may be met in a claim by a reference device which is capable of performing the intended use.

The reference of Rapchak discloses a container at 10 and a recloseable lid at closure 11. A finger release is provided at tab 24 on the lid to help in removing the lid from the container. Below surface 19 is a latching notch on the container which is latched to a protruding lip 28,27 on the lid for latching the lid on the container.

Although the reference of Rapchak does not disclose a film being wrapped and sealed in a flexible moisture-proof barrier, the container with lid is inherently capable of containing a product wrapped and sealed in a moisture-proof barrier of heat sealed aluminized thermoplastic, which has a

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size smaller than the volume of the interior of the container. Inasmuch as Applicant fails to claim a moisture-proof wrapped product as structure in the claims, but only claims such a wrapped product in a manner as intended use, the limitations regarding the claimed container as being for containing and exposing such a wrapped product are met by the capability of the container of Rapchak.

4) The following is a quotation of 35 U.S.C. § 103(a), which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5) Claims 1-3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936). Applicant has amended the claims to call for a unit of product being wrapped and sealed in a flexible barrier material to prevent high humidity and moisture penetration. However, this amendment fails to overcome the rejection based upon Saveliev et al since the product is claimed in the claims as intended use and not as structure in the container in the claims. Intended use may be met in a claim by a reference device which is capable of performing the intended use.

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In the reference of Ritter, a film case is disclosed including a container at body 11, a recloseable lid at cap 12, a latching notch at shoulder 20, and a protruding lip at beaded portion 23.

Although the reference of Ritter does not disclose a film being wrapped and sealed in a flexible moisture-proof barrier, the container 11 with lid 12 is inherently capable of containing a product wrapped and sealed in a moisture-proof barrier of heat sealed aluminized thermoplastic, which has a size smaller than the volume of the interior of the container. Inasmuch as Applicant fails to claim a moisture-proof wrapped product as structure in the claims, but only claims such a wrapped product in a manner as intended use, the limitations regarding the claimed container as being for containing and exposing such a wrapped product are met by the capability of the container of Ritter.

Although the reference of Ritter does not disclose a finger release, the reference of Saveliev et al at 18 suggests that the recloseable lid of a film container may be provided with a finger release/thumb tab to help in removing the lid (14) from the closed position of the container (12). Accordingly, it would have been obvious in view of this to have provided a finger release/thumb tab on the lid 12 of Ritter for the purpose of helping in the removal of the lid from the closed position.

6) Claim 4 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936) as applied to claim 3 above, and further in view of Rapchak (5,667,094). Although the thumb tab of Saveliev et al, as applied to Ritter, does not show the thumb tab as being

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further included from the protruding lip, the reference of Rapchak suggests that a finger release/tab may extend from the protruding lip of a lid. This would apparently provide better leverage in disengaging the protruding lip on the lid from the notch in the wall of the container. Accordingly, it would have further been obvious to have provided the finger release/tab of the lid of Ritter, as modified by Saveliev et al, so that the tab extends from the protruding lip of the lid, for the purpose of improving the leverage on the protruding lip, so as to better facilitate opening of the lid.

6. Claim 5 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936) and Rapchak (5,667,094) as applied to claim 4 above, and further in view of Cyr (5,775,496). The reference of Cyr at 50 suggests that carrying straps may be provided on a container for photographic equipment, including film, for the purpose of carrying the container from one's shoulder. For this purpose it would have further been obvious in view of Cyr to have provided a shoulder strap on the container of Ritter, as modified above.

7) Claim 6 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936), Rapchak (5,667,094) and Cyr (5,775,496) as applied to claim 5 above, and further in view of Mangla et al (6,257,401). The reference of Mangla et al at 78 suggests that the carrying straps of a container may be made molded to an exterior portion of the container. This would apparently permit the straps and container to be formed at the same time. For this purpose it would have further been

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obvious in view of Mangla et al to have made the straps of Ritter, as modified by Saveliev et al and Cyr above, to be molded to the container.

8) Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936) as applied to claim 1 above, and further in view of Pribyl (4,406,385). The reference of Pribyl at 24a,24b suggests that clips may be provided on a film container for the purpose of attachment to a carrying strap or belt. For this purpose it would further have been obvious in view of Pribyl to have provided strips on the container of Ritter, as modified above.

9) Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936) as applied to claim 1 above, and further in view of Shibazaki et al (5,370,227) and Cyr (5,775,496). The reference of Shibazaki et al at S2 suggests providing a partition in a film container, and making the container large enough, for the purpose of holding more than one roll of film separately. For this purpose it would have further been obvious in view of Shibazaki et al to have made the container of Ritter, as modified above, with a partition and with room for plural rolls of film.

Cyr, at the divider system, suggests that a partition may be removable for the purpose of partitioning a container into selected compartments. It would have further been obvious in view of Cyr and for this purpose to have made the partitions of Ritter, as modified above, removable.



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10) Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936) as applied to claim 1 above, and further in view of Hara (5,139,165). Hara at 5 and 13 suggests connecting the lid of a film container by hinge for the purpose of keeping the lid with the container when the lid is open. Apparently, a hinged lid would be handy for closure when such is desired. For this purpose it would have further been obvious in view of Hara to have made the lid of Ritter, as modified above, hinged to the container.

11) Claim 10 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ritter (3,355,061) in view of Saveliev et al (5,819,936) and Cyr (5,775,496) as applied to claim 8 above, and further in view of Sorci (4,955,502). The reference of Sorci at P suggests making partitions of paperboard for the purpose of making the partitions foldably collapsible when not in use. Accordingly, it would have further been obvious in view of Sorci to have made the partitions of Ritter, as modified above, from paperboard.

12) The arguments filed on December 8, 2003 have been considered but are not found to be persuasive. Applicant has argued that none of the applied references teach a case for storing and carrying a product with a moisture and humidity barrier protected product exposed in a product container. The law of anticipation does not require that an anticipatory reference teach what the applicant is claiming or has disclosed, but only that the claims "read on" what is disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly Clark Corp., 713

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F.2d 760, 218 USPQ 871 (Fed Cir. 1983). Furthermore, regarding the *functional/intended* use limitations of a claim, it is only necessary that the reference include structure that is capable of performing the *function/intended* use recited, in order to meet such limitations. See In re Mott, 557 F.2d 266, 194 USPQ 305 (CCPA 1977). Ex parte Masham, 2 USPQ2d 1647 (1987). See MPEP 2114. Applicant does not claim the wrapped product as structure. Applicant claims it as intended use which is met by the capability of the base references applied in rejection against the claims.

13) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

14) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax

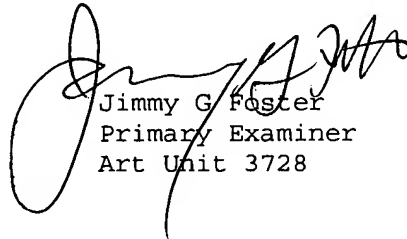
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phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.



Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF

4 March 2004